

The Making of the Hindu Code Bill (1840-1956)

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By 1840s, the British Government had established control over most of Indian territories and were ready to frame uniform laws related to crimes, proofs and agreements or contracts on the basis of a *Lex Loci* report of 1840 which had emphasised the importance and necessity of codification of laws in order to bring uniformity but they left the personal laws of Hindus and Muslims and allowed them to continue to practice their religious scriptures and customs. The British India Judiciary provided for application of Hindu, Muslim and English laws by British judges. In those days, many reformers raised voices to frame laws to check discrimination against women under the religious customs such as practice of Sati. However, British government was never interested to frame laws against 'personal laws' mainly due to fear from orthodox community leaders.

Daayabhag and *Mitakshara* are the two principal schools in Hindu law. The latter is subdivided into four minor schools. Besides, the custom of *sadachar*, as source of law, also occupies important position. At times the legislative processes were used during the British period to 'reform Hindu law'. Reforms relating to removal of caste disabilities, inheritance laws, law on widow's remarriage, property related laws and those related to women's right to separate residence and maintenance, among others, pertaining especially to women were sought to be enacted during this period. Thus the 'modern laws' gradually came to replace the ancient *shastras*. The Hindu Law Committee was appointed in 1941 to look into a comprehensive legislation covering all Hindu laws. This committee ceased to function after sometime due to the world war. Under the chairmanship of Sir B.N. Rau the Hindu Law Committee was revived in 1944 and recommendations of Rau committee were given effect by a series of acts passed in 1955 and 1956, to regulate marriage, succession, guardianship and adoption. These collectively came to known as the Hindu Code and it included enactments on very important aspects of Hindu law.

Among Muslims there are the *Shias*, *Sunnis*, *Ismailis*, *Khojas*, *Bohras* and the unorthodox *Ahmadiyaas*. There are four different schools among Sunnis. There are also the *Kutchi Memons*, who retained to some extent the private laws of the Hindus. Most of the legislations were enacted mainly to override judicial decisions and to restore

shariat law. The Wakf Validation Act, 1913 was passed to override the decision of Privy Council. A number of acts from the colonial period specifically exempted Muslims in an effort to avoid resistance from that community. The Indian Succession Act of 1925, which dealt with inheritance and succession, specifically exempted Muslims. Muslims had a complicated inheritance system based on the Quran. The original Indian inheritance law had been enacted in 1865 and had exempted Hindus as well. However, the act was ultimately applied to Hindus. The Special Marriage Act of 1872, which was essentially a secular civil marriage law, also exempted Muslims. Not all calls to exempt Muslims were accepted. For instance section 112 of Indian Evidence Act of 1872 which concerned the legitimacy of children later became applicable to Muslims, despite its inconsistency with Muslim law. Shariat Act, 1937 swept away any custom or usage contrary to the *shariat* in all questions regarding succession, special property of females, marriages and dissolution of marriages, guardianship, gifts, trust properties, *wakfs* etc. Muslim Dissolution of Marriage Act 1939 granted women the right to dissolution of marriage. In the case of Christians the Indian Christian Marriage Act was enacted. But this was not a comprehensive act. Personal Law of Parsis is partly codified but the machinery for dealing with divorce and other matrimonial reliefs are not proper. The constitution of India Article 44 contains a set of non-justiciable Directive Principles of State Policy that call for the reconstruction of Indian society along the lines of a modern welfare state. Among the Directive Principles is a commitment that the state secures to the citizens a Uniform Civil Code (UCC) throughout the territory of India. (Constitution of India, Part IV, Article 44) Although no such civil code unifying Hindu, Muslim and Christian law has yet been introduced, on the contrary Parliament passed during 1954-56 a series of Acts collectively known as the Hindu Code Bill (HCB).

Demand for Codification 1920s

The introduction of the 1921 resolution in the Imperial Legislative Assembly demanding codification of the Hindu Law started a new chapter in the history of Hindu marriage law reforms. Sir Hari Singh Gaur, K.G. Bagde, Pandit Jawahar Lal Bhargava and Dr. Nand Kishore Lal, were among the main initiators of the bill. Those against were the Law Member, Tej Bahadur Sapru, T.V. Sheshagir Ayyar, J.N. Mukherjee, P.S. Sivaswami Ayyar and M.N. Samarth. The reformers led by Sir Hari Singh Gour wanted a codification of Hindu Law and to bring it in line with English Law and thus provide women with the right to divorce. He highlighted three important issues viz. I) the need of a code for Hindu Law; II) whether it was possible to be codified and III) the nature of this code. He

argued, “that Hindu Law as it was originally enacted, was intended to meet the requirements of simple pastoral life. Society has grown and become more complicated, and with the growth of the society and the growth of the numerous problems which the modern conditions of the society bring, Hindu Law finds itself totally and wholly inadequate to deal with the conflicting claims and conflicting rights of persons and people.”(LAD, vol.I, part II, 1921, pp. 1591-92)

Keshao Ganesh Bagde of Madras asked for the appointment of a committee to consider codification. He compared this step with the national movement and highlighted its synchronization with global perceptions. Pointing out the uncertainties in the Hindu Law he remarked, “it is necessary that the governing of any particular people must be definite and capable of being known by the persons whose rights and duties it determines.” He stressed the need for legal reforms, “to meet the needs of society”. Another shortcoming of the Hindu Law was the confusion arising from the different interpretations of the same authoritative texts of the Hindu Law. (LAD, vol. I, 1921, pp. 1585-6)

Arguments against this resolution were summed up by the Law Member, Sir Tej Bahadur Sapru, who on behalf of the Government said that various local governments, High Courts, Bar Libraries and legal associations would be consulted in this matter and their opinion taken before any definite decision was reached regarding ‘codification’. He asked members to abstain from thinking that ‘once law has been codified, all the troubles are over.’ Quoting a French writer he went on to warn, “we have guarded against the dangerous ambition of wishing to regulate and foresee everything. The wants of society are so varied that it is impossible for the legislators to provide for every case or every emergency.” (LAD, vol. I, 1921, pp. 1602-3)

The Debate in the 1930s

The debate continued and in the 1930s the chief reformers were Moropant Joshi, Dr.G.V. Deshmukh, Harbilas Sharda, V.V. Joshi, and J.J. Hegde while conservatives like the law member N.N. Sircar, Lala Lajpat Rai, Sitaram Raju and C.S. Ranga Iyer were the main opponents. The principal demand of the reformers centered around the issue of Hindu women’s legal rights, definitely an advance over the earlier demand for codification only. H.S. Gaur’s 1928 bill entitling Hindu women to seek divorce was re-introduced several times between 1931 and 1933 as the Hindu Marriage Dissolution bill. The opponents asserted that the reformers were going too fast and were going against public opinion. Simultaneously, the bill to regularize civil marriage irrespective of cast and religion which had been initiated by H.S. Gour as early as 1921 (and was enacted as the Special Marriage Act of 1923 with shelved

provisions) was reintroduced in 1931 as the Special Marriage (Amendment) Bill to enable marriages between Hindus and Muslims. (LAD, Vol. IV, Sept. 1932, pp.151-164 and Vol. I, Jan-Feb., 1931, pp. 569-606)

In 1932, the Hindu Women's Right of Inheritance Bill to give Hindu widows a share in their husband's property was defeated on the grounds of "cutting across the laws of inheritance." C.S. Ranga Iyer even remarked that issues which created a split within the ranks of nationalists should not be dealt with. (LAD, Vol. I, Jan-Feb., 1932, pp. 73-104 and pp. 442-481) At this critical juncture, the old argument that political independence should take precedence over social reforms resurfaced again. The Inheritance Bill was a sequel to the 1929 Hindu Widow's Rights of Inheritance Bill which was also initiated by Har Bilas Sarda. However, in 1929 this was defeated on the ground that no share in property should be given to the widows. Although there was a general consensus of opinion with regards to the fact that the lot of Hindu widows was very unsatisfactory and deplorable as they did not inherit from either paternal or deceased husband's property. In 1933, Sarda again introduced a drastically shelved bill to get some sort of economic justice for women. This was the Hindu Widow's Right of Maintenance Bill to grant and fix the amount of maintenance for widows. This was labeled by Sarda as the "the first step in doing justice to a very deserving and helpless class of women". (LAD, Vol. V-VII Aug-Sept., 1933, pp.415-16) Dr. G.V. Deshmukh carried on the work of H.S. Gour and H.B. Sarda and was successful in getting the Hindu Women's Right to Property Act passed in 1937, although its provisions were altered drastically, were confined to widows and gave them a limited share in separate and joint property. This act caused a great deal of confusion on the issue of inheritance rights of women and became a source of dissatisfaction for later reformers leading to more drastic measures.

The decade of 1930's was also marked by active participation of women in the fight for their cause. Earlier, the WIA had set the pace for reforms through their journal *Stree Dharma* advocating support for the age of consent and age of marriage bills. It was actually the AIWC which took up the campaign for codification of Hindu Law. A shift in the perspective of women's organization from women's uplift to equal rights was obvious. (Jana M. Everett, *Women and Social Change in India*, New Delhi, 1981, pp.147) The AIWC and other women's organizations tried to convince the government to set up a commission with the aim of removal of legal disabilities of women. A booster for the above step was provided by V.V. Joshi's pamphlet in 1933 in which he argued a case for the need of change in Hindu Law to accommodate women to concentrate on propaganda, locate and speak to favourable members of

assembly to introduce reform bills. He also advocated the need of a committee to enquire into women's legal disabilities and suggest reforms. (V.V.Joshi, Legal Disabilities of Hindu Women, 1933)

The result was the 1934 resolution protesting against discriminations in Hindu Law against the rights of women asking for the appointment of an All India Non-Official Commission to suggest reforms regarding inheritance and marriage. (AIWC Annual Report, 1934, Eighth Conference, p. 220) This marked the beginning of a campaign by the AIWC through the legislature and the media. Most of the women fighting for the passage of the HCB were members of women's organizations especially the AIWC, which provided them with an effective forum to carry on their agitation. In the 1920's and 1930's the pioneer women activists were Sarojini Naidu, Vijaya Laxmi Pandit, Lady Abdul Qadir, Renuka Ray, Lakshmi Bai Rajwade, Charulata Mukherjee and Radhabai Subbarayan.

The Rau Committee 1940s

Pressures exercised by the reformers and organizations in the previous two decades led to the appointment of the Rau Committee in 1941 to consider the reforms of Hindu Law relating to inheritance and to clarify the previously introduced Deshmukh Bill on separate residence and maintenance. This committee consisted of important lawyers – Chairman, Benegal Narsingh Rau, Bengal High Court Judge, D.N. Mitter former Bengal High Court Judge, J.R. Gharpure, a Pune Law College Principal and V.V. Joshi, a Baroda lawyer. Mitter and Gharpure were leading Sanskritists and the former had sympathies for the orthodox position. V.V. Joshi was a known advocate of women's rights. The report of the committee suggested a comprehensive legislation by blending the best of all the schools of Hindu Law with regard to the issue of succession and marriage and furnished the Government with two draft bills dealing with these issues for consideration in legislatures. However, the latter though not dissenting openly tried to sidetrack the issue by asking for the formulation and "enactment of the remaining parts of the projected code (dealing with adoption and guardianship) for the Bills under consideration would require further readjustment and amendment in the light of decision taken in connection with other branches of the Hindu Law." This led to the formation of a revived Hindu Law Committee in 1944 with the addition of only one more member Mr.T.R. Venkatarama Sastry of Madras, known for his pro-reformist stance. (Report of the Hindu Law Committee, Delhi, 1947, p.40) Its field now extended to divorce, minority and guardianship and adoption apart from succession and marriage. (Ibid. p.32)

In the legislature and outside, the battle was fought by the proponents of the HCB led by the Law Member, Sir Sultan Ahmed, T.R.Venkatarama Sastry, Sir Sitaram Patkar, C.H. Setalvad, M.C.Chagla, Bhulabhai J. Desai, and M.R. Jayakar culminating in the efforts of B.R. Ambedkar and M.R. Masani. One exception amongst this galaxy of luminaries was that of K. Natarajan, who despite his well-known and staunch reformist views was apprehensive about the clause on divorce and wrote against it in his journal Indian Social Reformer. (Indian Social Reformer, January 26 February 9, 1946)

In 1943, the major apprehensions of the Hindus in the legislature were voiced by Bhai Parmanand of West Punjab and ex-president of the Hindu Mahasabha, Babu Baijnath Bajoria of the Marwari Association and an avowed Hindu, Pandit Nilakantha Das of Orissa. Bhai Parmanand questioned the very necessity of such a bill and the authority of the Rau committee to frame a code for Hindu society. A third objection was raised in the name of interference of Hindu religion thus endangering its existence and finally that such a reform (regarding succession) would destroy the family system which according to the *smritis* is the basic unit of society where the individual is secondary. Moreover, at the time of marriage of a daughter, her dowry is supposed to be her share in her paternal property. (LAD, Vol. II, 1943, pp.1414-1415, 1418-1419) Interestingly, the same arguments were used by the opponents of Intestate Succession Bill in the 1950's also. Pandit Nilakantha Das contended that Hinduism is a very progressive *sanatan* religion and had adopted itself to circumstances. Hindu laws had come down through sacred authorities like Vedas, Upanishads and Manu and could not be tackled by a legislature unrepresentative of Hindus (Ibid. pp. 1560-63). Babu Bajoria while complaining about the lack of publicity and time given to the Bill said it was a far reaching, radical and revolutionary measure. Talking of the intestate succession and absolute right over inherited property of women he said that women were not capable of managing property. (Ibid, pp. 1425-1426)

Those in favour of the motion including Renuka Ray, nominated non-official member representing the country's women and women's organizations, and Mr. G.V. Deshmukh of Nagpur, declared the necessity of a comprehensive code, which covers all aspects of Hindu law because piecemeal legislation, by treating anomalies in law, can never be successful. According to the reformers, Hindu women had always been entitled to absolute estate by the Vedas and it was only man made courts of law that had brought in limited property rights for women. The Bill was inspired by Hindu law itself and did not introduce any revolutionary reforms. Mr. G.V. Deshmukh stressed the

aspect of a changing society versus unchanged laws and argued that the introduction of the Bill had not been sudden but dated back to more than a decade. (Ibid, pp. 1421-1424, 1554)

In 1941, the Congress launched Individual Satyagraha and in 1942, the Quit India Movement. Opinion was, therefore, divided on whether to support or boycott a government appointed committee. Mridula Sarabhai advocated loyalty to the party and boycott of the committee but Vilisani Devi Shenai preferred to support the women's cause. She remarked, 'today our men are clamouring for political rights at the hand of an alien Government. Have they conceded their wives, their own sisters, their daughters, 'flesh of their flesh, blood of their blood', social equality and economic justice?' (AIWC Annual Report 1944-45) Renuka Ray professed faith in the Congress and remarked, 'those who are now in the vanguard of the struggle for freedom for the nation can never be against the freedom of women' (Legislative Assembly Debates, Vol. II, 1943, p. 1423). But for the Congress, priority was for the nationalist struggle; as a result, women's issues receded in the background (Gail Mainault ed. *The Extended Family*, 1981, p. 72, 73 and 76), to be taken up by some women themselves along with a few genuinely committed men.

The bulk of the HCB related activities during the mid 1940s, outside the legislature were undertaken by the women's organizations. Meetings were held and resolutions passed to draw attention of the public to the need for reforms. Resolutions supporting the reconstitution of the Rau Committee, appointment of additional women to the legislature and extension of property rights to include agricultural lands were passed by the AIWC. Men and women of eminence spoke on the issue inspiring people to extend their support openly. In the seventeenth session of the AIWC held in Bombay in 1944, prominent jurists like M.C. Setalvad, M.C. Chagla, Sitaram Patkar and B.J. Desai spoke in favour of the resolutions. Kamaladevi Chattopadhyaya, Hansa Mehta, Kitty Shiva Rau, AmritKaur, Chandralekha Sahai, Rameshwari Nehru, Lakshmi Menon and Saudamini Mehta were among the many women who carried on a campaign for the HCB. In 1945, under Hansa Mehta's presidentship at the Sind Conference of the AIWC a Charter of Women's Rights and Duties was prepared and a Memorandum on Planning for National Welfare was sent to the Vice President of the Interim Government. Pandit JawaharLal Nehru in 1946 wrote back, "I am personally anxious to do everything in my power to advance the cause of women in the country". (AIWC Annual Report 1945-46) To women, the future appeared to be bright.

Post-Independence Scenario

The final and most hectic phase of HCB formulation started in 1948, immediately after Independence was attained. Orthodox Hindu attitude towards the HCB had become more hostile due to perceived attacks on Hinduism in the wake of violence during partition and the non-fulfillment of the Hindu –Raj after Independence. (Everett, 1981, p. 169) Although this hostility to the Bill by the orthodoxy was not a new feature- its crystallization after 1950 can be seen as an indication of the growth of Hindu orthodox sentiments and beliefs. At the same time, in the post independence period, the Bills ‘became more radical in most respects and the issues involved were discussed in much greater depth’. (Harold Levy, 1963, p. 144) The British, identified as ‘the primary obstacles to reform had been removed’ [fn. 34] and the Bill came to be identified as ‘the symbol of modernisation’, supported by ardent progressives like Nehru and Ambedkar. (Everett, 1981, p.169)

A glance at the major events from 1947 to 1956 shows that things moved faster during this period than in the earlier three phases. The reconstituted Rau Committee introduced the HCB in the Legislative Assembly in April 1947. With the advent of Independence and partition in August, 1947 the Bill was not immediately considered. In 1948, the Law Minister revised the draft of the HCB and it was introduced in the Constituent Assembly on April 9, 1948. Then it was referred to a Select Committee (Ambedkar Committee) composed of 17 legislators. Three women- G. Durgabai, Renuka Ray and Ammu Swaminathan were included. In the 1949 debates, legislators expressed considerable opposition over the radicalized committee report. In April 1950, an informal conference on the Bill was held in New Delhi to reconcile differences emerging in the debate. It was attended both by pundits who opposed the HCB provisions relating to divorce and monogamy on the one hand, and by proponents of the Bill, who formed a majority, on the other, while two Malabar representatives urged the application of *Marumakkathayam* (matriarchal system) to the entire country, the orthodoxy upheld the view that ‘introduction of divorce would shatter the entire fabric of Hindu society’. (Times of India, Bombay, April 22, 1950, p.1) In November 1950, Ambedkar circulated the modified HCB which was debated in February and September 1951, at length. Most of the Congress members who were well known in the national movement were opposed to the Bill leading to its abandonment in September 1951 and the subsequent resignation of Ambedkar.

A major argument was that the Bill was an attempt to demolish the entire structure of Hindu society. It was said that since men and women have different responsibilities and obligations in the family, it was not fair to give men and women equal rights. It was also argued that since women occupied a revered position in Hindu society identical property rights would mean decline in the image of women as seekers of material benefits. The Bill put forth new cause of disruption in every family. Another was related to the nature of Hindu women, who have been so trained that even after getting their rights they would not use them and continue to perform their privileged position would to be threatened and their families would not be put to any danger as women would not actually use these rights. Women did not want these changes and whatever women leaders are seeking, their demands are unrepresentative of Indian women. (CAD, Dec. 1949, Vol. VII, Part II, p. 784., Vol. V, part II, pp. 552-55 and 561-64)

The period from 1954 to 1958 saw fresh debates in the popularly elected Lok Sabha. Nehru's victory in the elections was seen by some to signify a clean passage for the HCB, for HCB was one of the issues on the election agenda. The chief arguments against the Bill were the same as during the previous decades. However, the provision for divorce came under severe attack. The main argument being that 'divorce should not be forced on an unwilling people' and that Hindu marriage is a sacrament, therefore it is indissoluble. The supporters contended that the fears that divorce would become imperative were baseless. On the contrary it was felt that this clause would provide an escape for extremely hard cases. (*Amrit Bazar Patrika*, May 3, 1955, pg.a: April 30, 1955, pg.1)

Conclusion

As is clear from the above account of the development of HCB related activities that the issues that were involved, viz. marriage age, property rights, the provision for divorce, adoption, maintenance, guardianship for Hindu women and that of civil marriage had their beginnings in the previous century. It was the Special Marriage Act of 1872, the Widow Remarriage Act of 1856 and the Caste Disabilities Removal Act of 1850 that had set the ball rolling. These issues first came to light during the debates on these Acts and since then had become the bone of contention between the reformers and the hardliners.

Four phases of development of HCB controversy have been identified. These are:

- 1920s - the period of increasing demand for codification.
- 1930s - thrashing out of various issues concerning marriage and related issues in the context of position of women.
- 1940s - the period of Hindu Law Committee.
- 1950s - post independence era and the period of achievement.

Women's organizations played an important role in lobbying and pressurizing members of the legislatures to pass the reform bills. They did so by holding public meetings, debates, publishing pamphlets and articles and approaching individual legislators. They were also in favour of the same laws for all the categories irrespective of religion.

The reformers were influenced by ideas of women's legal equality and gender justice and desired social change whereas many of the opponents of the HCB were radical in their politics. When it came to equal social and economic rights for women, they opposed them on the ground that it threatened the fabric of 'tradition and culture'. Since most of the people involved with the reformist activity were Congressmen, preoccupied with winning independence, they did not take a definite position on Hindu law reform in the pre-independence period (Harold Levy, 1973, p. 221) and with much reluctance later on, barring Ambedkar (not a Congressman), Nehru and the women's wing of the Congress (there were some women who were opposed to the HCB). Among lawyers, there was a small group of liberals concerned with political and social reforms who perhaps believed that law was capable of bringing about social change. The twentieth century reformers were basically committed to the same ideals as their nineteenth century counterparts, socially they advocated emancipation of women and politically, they were moderate who favoured the gradual extension of the institution of self – rule, being moderates in their leanings. In the period 1920-1950, women, however, played a much more vocal and crucial role in urging for reform in laws pertaining to their rights than in the nineteenth century.

References

1. The Constitution of India, 1950, Art. 44.
2. Legislative Assembly Debates, 1921, 1931, 1932, 1943,
3. Everett, Jana M., Women and Social Change in India, New Delhi, 1981, pp.147.
4. Joshi, V.V., "Legal Disabilities of Hindu Women." (Pamphlet) 1933, All India Women's Conference Library, File No. 36.
5. AIWC Annual Report, 1934, Eighth Conference, p. 220.
6. Report of the Hindu Law Committee, Delhi, 1947.
7. Indian Social Reformer, January 26 February 9, 1946.
8. Mainault, Gail ed. The Extended Family, Delhi 1981.
9. Levy, Harold, 'The HCB in British India,' M.Phil. Dissertation University of Chicago, 1963.
10. Times of India, Bombay, 1950.
11. Constituent Assembly Debates, Dec. 1949.
12. *Amrit Bazar Patrika*, May 3, 1955.
13. Levy, Harold, 'India Modernization by Legislation: The HCB', Ph.D. Dissertation, University of Chicago, 1973.